

May 5, 1993

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## Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 5th day of May, 1993, found determined and ordered as follows:

On April 24, 1992, Marna Zanoff, owner of condominium dwelling units at 2207 and 2213 Washington Avenue, Bethesda, MD, hereinafter the Complainant, filed a formal dispute with the Office of Common Ownership Communities. The Complainant alleged that the Rock Creek Commons Condominium, Board of Directors, Governing Body of the Rock Creek Gardens Condominium Three, hereinafter the Respondent Board, refused to allow her to inspect certain books, records and accounts of the Council of Unit Owners in violation of Article XIII, Section 5 of the Bylaws of the Council of Unit Owners of Rock Creek Commons Condominium Three, Inc.

Specifically, the Complainant alleged that, after receiving her written request, the Respondent Board refused to allow her access to information, reports, recommendations and bids, related to the nature and extent of the structural damage, cause(s) of the damage, issues of safety and anticipated costs at 2213 Washington Avenue.

The Respondent Board contended that the information requested by the Complainant was privileged material and may have been related to potential litigation. Therefore, the Respondent Board, on advice of counsel, denied the Complainant's request.

The Complainant sought an order for the Respondent Board to make available to her for inspection, all information related to the structural damages to 2213 Washington Avenue, including all reports, recommendations, bids, etc., which would indicate the cause(s) of the damage, recommendations for repairs, issues of safety, a full accounting of costs to repair, and a chronological history of the problem dating back to the 1990 engineering report commissioned by the Board of Directors.

Inasmuch as the matter was not resolved through mediation, this dispute was presented to the Commission on Common Ownership Communities for action pursuant to Section 10B-11(e). On January 27, 1993, the Commission conducted a public hearing in this case.

The hearing was adjourned to allow the Respondent 48 hours to produce the subpoenaed documents and the parties agreed that the hearing would be re-convened upon 15 days' notice.

#### FINDINGS OF FACT

Based on the stipulations of the parties and the testimony and evidence of record, the Commission makes the following findings:

1. The Complainant is the owner of a condominium unit at 2213 Washington Avenue, Bethesda, Maryland, within the Rock Creek Commons Condominium, Inc.

2. The Complainant requested in writing certain records and information related to structural damage and repairs in one of the first floor units at 2213 Washington Avenue from the Respondent.

3. The Respondent denied the Complainant access to the requested records based on the possibility of potential litigation related to the damage and repairs at 2213 Washington Avenue.

4. On March 10, 1993, Denise L. Palmieri, attorney for the Respondent, advised the Commission on Common Ownership Communities and the Complainant that the requested records, previously denied the Complainant, were now available for her to review.

5. On April 9, 1993, Denise L. Palmieri, attorney for the Respondent, restated the Board's willingness to allow the Complainant to review the Association's records.

6. All of the records previously requested by the Complainant are now available to her for review and copying, at a mutually agreeable time and place. The Complainant may have copies of these records made, at her own expense.

### CONCLUSIONS OF LAW

Accordingly, the Commission concludes based upon a preponderance of the evidence including, but not limited to, testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record, that:

1. Section 11-116 (c) of the Real Property Article of the Annotated Code of Maryland, 1988, as amended states: "every record, including insurance policies, kept by the council of unit owners shall be maintained in Maryland or within 50 miles of its borders and shall be available at some place designated by the council of unit owners within the county where the condominium is located for examination and copying by any unit owner, his mortgagee, and their respective duly authorized agents or attorneys, during normal business hours, and after reasonable notice."

2. Article XIII, Section 5 of the Bylaws of the Council of Unit Owners states:

Inspection of Books. The books and accounts of the Council of Unit Owners, vouchers, accrediting the entries made thereupon and all other records maintained by the Council of Unit Owners shall be available for examination by the unit owners and by their duly authorized agents or attorneys, and by the institutional holder of any first mortgage on any condominium unit and its duly authorized agents or attorneys, at some place designated by the Board of Directors, during normal business hours and for purposes reasonably related to their respective interests and after reasonable notice.

3. Pursuant to Section 11-116 (c), Real Property Article, Annotated Code of Maryland, the Respondent has a responsibility to provide access to every record kept by the Council of Unit Owners.

4. The Respondent has complied with the requirements of Article XIII, Section 5 of the Bylaws of the Council of Unit Owners and with Section 11-116 (c) of the Real Property Article, Annotated Code of Maryland, by making the records of the Council of Unit Owners available to the Complainant.

### ORDER

In view of the foregoing, and based on the evidence of record, the Commission orders that:

1. Based on the Respondent's compliance with the Complainant's request for access to records, as outlined in her complaint, there is no need to re-convene the Public Hearing in this matter.

2. Respondent has agreed to make the requested documents available to the Complainant, and the Commission on Common Ownership Communities hereby dismisses this complaint.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



David Gardner  
Panel Chairperson  
Commission on Common  
Ownership Communities

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